



# House of Representatives

General Assembly

**File No. 382**

January Session, 2015

Substitute House Bill No. 6878

*House of Representatives, April 1, 2015*

The Committee on Labor and Public Employees reported through REP. TERCYAK of the 26th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT CONCERNING WORKERS' COMPENSATION LIABILITY FOR INDIVIDUALS RECEIVING SERVICES FROM PERSONAL CARE ATTENDANTS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (a) of section 17b-706b of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective*  
3 *October 1, 2015*):

4 (a) Personal care attendants shall not be considered state employees,  
5 except for purposes of chapter 568, and shall be exempt from any and  
6 all provisions of the general statutes creating rights, obligations,  
7 privileges or immunities to state employees as a result of or incident to  
8 their state service other than those provided under said chapter.

9 Sec. 2. (NEW) (*Effective October 1, 2015*) Notwithstanding any other  
10 provision of the general statutes, any personal care attendant, as  
11 defined in section 17b-706 of the general statutes, shall be deemed a

12 state employee for purposes of chapter 568 of the general statutes.

13 Sec. 3. (NEW) (*Effective October 1, 2015*) The Commissioners of  
14 Developmental Services and Social Services shall collaborate with the  
15 Commissioner of Administrative Services and the chairman of the  
16 Workers' Compensation Commission to provide workers'  
17 compensation benefits for personal care attendants, as defined in  
18 section 17b-706 of the general statutes. The cost for the provision of  
19 such benefits shall be paid by the state and shall not reduce services or  
20 affect consumers served by such personal care attendants.

21 Sec. 4. Section 31-275 of the general statutes is repealed and the  
22 following is substituted in lieu thereof (*Effective October 1, 2015*):

23 As used in this chapter, unless the context otherwise provides:

24 (1) "Arising out of and in the course of his employment" means an  
25 accidental injury happening to an employee or an occupational disease  
26 of an employee originating while the employee has been engaged in  
27 the line of the employee's duty in the business or affairs of the  
28 employer upon the employer's premises, or while engaged elsewhere  
29 upon the employer's business or affairs by the direction, express or  
30 implied, of the employer, provided:

31 (A) (i) For a police officer or firefighter, "in the course of his  
32 employment" encompasses such individual's departure from such  
33 individual's place of abode to duty, such individual's duty, and the  
34 return to such individual's place of abode after duty;

35 (ii) For an employee of the Department of Correction, (I) when  
36 responding to a direct order to appear at his or her work assignment  
37 under circumstances in which nonessential employees are excused  
38 from working, or (II) following two or more mandatory overtime work  
39 shifts on consecutive days, "in the course of his employment"  
40 encompasses such individual's departure from such individual's place  
41 of abode directly to duty, such individual's duty, and the return  
42 directly to such individual's place of abode after duty;

43 (iii) Notwithstanding the provisions of clauses (i) and (ii) of this  
44 subparagraph, the dependents of any deceased employee of the  
45 Department of Correction who was injured in the course of his  
46 employment, as defined in this subparagraph, on or after July 1, 2000,  
47 and who died not later than July 15, 2000, shall be paid compensation  
48 on account of the death, in accordance with the provisions of section  
49 31-306, retroactively to the date of the employee's death. The cost of the  
50 payment shall be paid by the employer or its insurance carrier which  
51 shall be reimbursed for such cost from the Second Injury Fund as  
52 provided in section 31-354 upon presentation of any vouchers and  
53 information that the Treasurer may require;

54 (B) A personal injury shall not be deemed to arise out of the  
55 employment unless causally traceable to the employment other than  
56 through weakened resistance or lowered vitality;

57 (C) In the case of an accidental injury, a disability or a death due to  
58 the use of alcohol or narcotic drugs shall not be construed to be a  
59 compensable injury;

60 (D) For aggravation of a preexisting disease, compensation shall be  
61 allowed only for that proportion of the disability or death due to the  
62 aggravation of the preexisting disease as may be reasonably attributed  
63 to the injury upon which the claim is based;

64 (E) A personal injury shall not be deemed to arise out of the  
65 employment if the injury is sustained: (i) At the employee's place of  
66 abode, and (ii) while the employee is engaged in a preliminary act or  
67 acts in preparation for work unless such act or acts are undertaken at  
68 the express direction or request of the employer;

69 (F) For purposes of subparagraph (C) of this subdivision, "narcotic  
70 drugs" means all controlled substances, as designated by the  
71 Commissioner of Consumer Protection pursuant to subsection (c) of  
72 section 21a-243, but does not include drugs prescribed in the course of  
73 medical treatment or in a program of research operated under the  
74 direction of a physician or pharmacologist. For purposes of

75 subparagraph (E) of this subdivision, "place of abode" includes the  
76 inside of the residential structure, the garage, the common hallways,  
77 stairways, driveways, walkways and the yard;

78 (G) The Workers' Compensation Commission shall adopt  
79 regulations, in accordance with the provisions of chapter 54, to  
80 implement the provisions of this section and shall define the terms "a  
81 preliminary act", "acts in preparation for work", "departure from place  
82 of abode directly to duty" and "return directly to place of abode after  
83 duty" on or before January 1, 2006.

84 (2) "Commission" means the Workers' Compensation Commission.

85 (3) "Commissioner" means the compensation commissioner who has  
86 jurisdiction in the matter referred to in the context.

87 (4) "Compensation" means benefits or payments mandated by the  
88 provisions of this chapter, including, but not limited to, indemnity,  
89 medical and surgical aid or hospital and nursing service required  
90 under section 31-294d and any type of payment for disability, whether  
91 for total or partial disability of a permanent or temporary nature, death  
92 benefit, funeral expense, payments made under the provisions of  
93 section 31-284b, 31-293a or 31-310, or any adjustment in benefits or  
94 payments required by this chapter.

95 (5) "Date of the injury" means, for an occupational disease, the date  
96 of total or partial incapacity to work as a result of such disease.

97 (6) "Dependent" means a member of the injured employee's family  
98 or next of kin who was wholly or partly dependent upon the earnings  
99 of the employee at the time of the injury.

100 (7) "Dependent in fact" means a person determined to be a  
101 dependent of an injured employee, in any case where there is no  
102 presumptive dependent, in accordance with the facts existing at the  
103 date of the injury.

104 (8) "Disfigurement" means impairment of or injury to the beauty,

105 symmetry or appearance of a person that renders the person unsightly,  
106 misshapen or imperfect, or deforms the person in some manner, or  
107 otherwise causes a detrimental change in the external form of the  
108 person.

109 (9) (A) "Employee" means any person who:

110 (i) Has entered into or works under any contract of service or  
111 apprenticeship with an employer, whether the contract contemplated  
112 the performance of duties within or without the state;

113 (ii) Is a sole proprietor or business partner who accepts the  
114 provisions of this chapter in accordance with subdivision (10) of this  
115 section;

116 (iii) Is elected to serve as a member of the General Assembly of this  
117 state;

118 (iv) Is a salaried officer or paid member of any police department or  
119 fire department;

120 (v) Is a volunteer police officer, whether the officer is designated as  
121 special or auxiliary, upon vote of the legislative body of the town, city  
122 or borough in which the officer serves;

123 (vi) Is an elected or appointed official or agent of any town, city or  
124 borough in the state, upon vote of the proper authority of the town,  
125 city or borough, including the elected or appointed official or agent,  
126 irrespective of the manner in which he or she is appointed or  
127 employed. Nothing in this subdivision shall be construed as affecting  
128 any existing rights as to pensions which such persons or their  
129 dependents had on July 1, 1927, or as preventing any existing custom  
130 of paying the full salary of any such person during disability due to  
131 injury arising out of and in the course of his or her employment;

132 (vii) Is a member of the armed forces of the state while in the  
133 performance of military duty, whether paid or unpaid for such  
134 military duty, in accordance with the provisions of section 27-17, 27-18

135 or 27-61; or

136 (viii) Is elected to serve as a probate judge for a probate district  
137 established in section 45a-2.

138 (B) "Employee" shall not be construed to include:

139 (i) Any person to whom articles or material are given to be treated  
140 in any way on premises not under the control or management of the  
141 person who gave them out;

142 (ii) One whose employment is of a casual nature and who is  
143 employed otherwise than for the purposes of the employer's trade or  
144 business;

145 (iii) A member of the employer's family dwelling in his house; but,  
146 if, in any contract of insurance, the wages or salary of a member of the  
147 employer's family dwelling in his house is included in the payroll on  
148 which the premium is based, then that person shall, if he sustains an  
149 injury arising out of and in the course of his employment, be deemed  
150 an employee and compensated in accordance with the provisions of  
151 this chapter;

152 (iv) Any person other than a personal care attendant, as defined in  
153 section 17b-706, engaged in any type of service in or about a private  
154 dwelling provided he is not regularly employed by the owner or  
155 occupier over twenty-six hours per week;

156 (v) An employee of a corporation who is a corporate officer and  
157 who elects to be excluded from coverage under this chapter by notice  
158 in writing to his employer and to the commissioner; or

159 (vi) Any person who is not a resident of this state but is injured in  
160 this state during the course of his employment, unless such person (I)  
161 works for an employer who has a place of employment or a business  
162 facility located in this state at which such person spends at least fifty  
163 per cent of his employment time, or (II) works for an employer  
164 pursuant to an employment contract to be performed primarily in this

165 state.

166 (10) "Employer" means any person, corporation, limited liability  
167 company, firm, partnership, voluntary association, joint stock  
168 association, the state and any public corporation within the state using  
169 the services of one or more employees for pay, or the legal  
170 representative of any such employer, but all contracts of employment  
171 between an employer employing persons excluded from the definition  
172 of employee and any such employee shall be conclusively presumed to  
173 include the following mutual agreements between employer and  
174 employee: (A) That the employer may accept and become bound by  
175 the provisions of this chapter by immediately complying with section  
176 31-284; (B) that, if the employer accepts the provisions of this chapter,  
177 the employee shall then be deemed to accept and be bound by such  
178 provisions unless the employer neglects or refuses to furnish  
179 immediately to the employee, on his written request, evidence of  
180 compliance with section 31-284 in the form of a certificate from the  
181 commissioner, the Insurance Commissioner or the insurer, as the case  
182 may be; (C) that the employee may, at any time, withdraw his  
183 acceptance of, and become released from, the provisions of this chapter  
184 by giving written or printed notice of his withdrawal to the  
185 commissioner and to the employer, and the withdrawal shall take  
186 effect immediately from the time of its service on the commissioner  
187 and the employer; and (D) that the employer may withdraw his  
188 acceptance and the acceptance of the employee by filing a written or  
189 printed notice of his withdrawal with the commissioner and with the  
190 employee, and the withdrawal shall take effect immediately from the  
191 time of its service on the commissioner and the employee. The notices  
192 of acceptance and withdrawal to be given by an employer employing  
193 persons excluded from the definition of employee and the notice of  
194 withdrawal to be given by the employee, as provided in this  
195 subdivision, shall be served upon the commissioner, employer or  
196 employee, either by personal presentation or by registered or certified  
197 mail. In determining the number of employees employed by an  
198 individual, the employees of a partnership of which he is a member  
199 shall not be included. A person who is the sole proprietor of a business

200 may accept the provisions of this chapter by notifying the  
201 commissioner, in writing, of his intent to do so. If such person accepts  
202 the provisions of this chapter he shall be considered to be an employer  
203 and shall insure his full liability in accordance with subdivision (2) of  
204 subsection (b) of section 31-284. Such person may withdraw his  
205 acceptance by giving notice of his withdrawal, in writing, to the  
206 commissioner. Any person who is a partner in a business shall be  
207 deemed to have accepted the provisions of this chapter and shall  
208 insure his full liability in accordance with subdivision (2) of subsection  
209 (b) of section 31-284, unless the partnership elects to be excluded from  
210 the provisions of this chapter by notice, in writing and by signed  
211 agreement of each partner, to the commissioner.

212 (11) "Full-time student" means any student enrolled for at least  
213 seventy-five per cent of a full-time student load at a postsecondary  
214 educational institution which has been approved by a state-recognized  
215 or [federally-recognized] federally recognized accrediting agency or  
216 body. "Full-time student load" means the number of credit hours,  
217 quarter credits or academic units required for a degree from such  
218 institution, divided by the number of academic terms needed to  
219 complete the degree.

220 (12) "Medical and surgical aid or hospital and nursing service",  
221 when requested by an injured employee and approved by the  
222 commissioner, includes treatment by prayer or spiritual means  
223 through the application or use of the principles, tenets or teachings of  
224 any established church without the use of any drug or material  
225 remedy, provided sanitary and quarantine regulations are complied  
226 with, and provided all those ministering to the injured employee are  
227 bona fide members of such church.

228 (13) "Member" includes all parts of the human body referred to in  
229 subsection (b) of section 31-308.

230 (14) "Nursing" means the practice of nursing as defined in  
231 subsection (a) of section 20-87a, and "nurse" means a person engaged  
232 in such practice.



233 (15) "Occupational disease" includes any disease peculiar to the  
234 occupation in which the employee was engaged and due to causes in  
235 excess of the ordinary hazards of employment as such, and includes  
236 any disease due to or attributable to exposure to or contact with any  
237 radioactive material by an employee in the course of his employment.

238 (16) (A) "Personal injury" or "injury" includes, in addition to  
239 accidental injury that may be definitely located as to the time when  
240 and the place where the accident occurred, an injury to an employee  
241 that is causally connected with the employee's employment and is the  
242 direct result of repetitive trauma or repetitive acts incident to such  
243 employment, and occupational disease.

244 (B) "Personal injury" or "injury" shall not be construed to include:

245 (i) An injury to an employee that results from the employee's  
246 voluntary participation in any activity the major purpose of which is  
247 social or recreational, including, but not limited to, athletic events,  
248 parties and picnics, whether or not the employer pays some or all of  
249 the cost of such activity;

250 (ii) A mental or emotional impairment, unless such impairment (I)  
251 arises from a physical injury or occupational disease, (II) in the case of  
252 a police officer, arises from such police officer's use of deadly force or  
253 subjection to deadly force in the line of duty, regardless of whether  
254 such police officer is physically injured, provided such police officer is  
255 the subject of an attempt by another person to cause such police officer  
256 serious physical injury or death through the use of deadly force, and  
257 such police officer reasonably believes such police officer to be the  
258 subject of such an attempt, or (III) in the case of a firefighter, is  
259 diagnosed as post-traumatic stress disorder by a licensed and board  
260 certified mental health professional, determined by such professional  
261 to be originating from the firefighter witnessing the death of another  
262 firefighter while engaged in the line of duty and not subject to any  
263 other exclusion in this section. As used in this clause, "police officer"  
264 means a member of the Division of State Police within the Department  
265 of Emergency Services and Public Protection, an organized local police

266 department or a municipal constabulary, "firefighter" means a  
267 uniformed member of a municipal paid or volunteer fire department,  
268 and "in the line of duty" means any action that a police officer or  
269 firefighter is obligated or authorized by law, rule, regulation or written  
270 condition of employment service to perform, or for which the police  
271 officer or firefighter is compensated by the public entity such officer  
272 serves;

273 (iii) A mental or emotional impairment that results from a personnel  
274 action, including, but not limited to, a transfer, promotion, demotion  
275 or termination; or

276 (iv) Notwithstanding the provisions of subparagraph (B)(i) of this  
277 subdivision, "personal injury" or "injury" includes injuries to  
278 employees of local or regional boards of education resulting from  
279 participation in a school-sponsored activity but does not include any  
280 injury incurred while going to or from such activity. As used in this  
281 clause, "school-sponsored activity" means any activity sponsored,  
282 recognized or authorized by a board of education and includes  
283 activities conducted on or off school property and "participation"  
284 means acting as a chaperone, advisor, supervisor or instructor at the  
285 request of an administrator with supervisory authority over the  
286 employee.

287 (17) "Physician" includes any person licensed and authorized to  
288 practice a healing art, as defined in section 20-1, and licensed under the  
289 provisions of chapters 370, 372 and 373 to practice in this state.

290 (18) "Podiatrist" means any practitioner of podiatry, as defined in  
291 section 20-50, and duly licensed under the provisions of chapter 375 to  
292 practice in this state.

293 (19) "Presumptive dependents" means the following persons who  
294 are conclusively presumed to be wholly dependent for support upon a  
295 deceased employee: (A) A wife upon a husband with whom she lives  
296 at the time of his injury or from whom she receives support regularly;  
297 (B) a husband upon a wife with whom he lives at the time of her injury

298 or from whom he receives support regularly; (C) any child under the  
299 age of eighteen, or over the age of eighteen but physically or mentally  
300 incapacitated from earning, upon the parent with whom he is living or  
301 from whom he is receiving support regularly, at the time of the injury  
302 of the parent; (D) any unmarried child who has attained the age of  
303 eighteen but has not attained the age of twenty-two and who is a full-  
304 time student, upon the parent with whom he is living or from whom  
305 he is receiving support regularly, provided, any child who has attained  
306 the age of twenty-two while a full-time student but has not completed  
307 the requirements for, or received, a degree from a postsecondary  
308 educational institution shall be deemed not to have attained the age of  
309 twenty-two until the first day of the first month following the end of  
310 the quarter or semester in which he is enrolled at the time, or if he is  
311 not enrolled in a quarter or semester system, until the first day of the  
312 first month following the completion of the course in which he is  
313 enrolled or until the first day of the third month beginning after such  
314 time, whichever occurs first.

315 (20) "Previous disability" means an employee's preexisting condition  
316 caused by the total or partial loss of, or loss of use of, one hand, one  
317 arm, one foot or one eye resulting from accidental injury, disease or  
318 congenital causes, or other permanent physical impairment.

319 (21) "Scar" means the mark left on the skin after the healing of a  
320 wound or sore, or any mark, damage or lasting effect resulting from  
321 past injury.

322 (22) "Second disability" means a disability arising out of a second  
323 injury.

324 (23) "Second injury" means an injury, incurred by accident,  
325 repetitive trauma, repetitive acts or disease arising out of and in the  
326 course of employment, to an employee with a previous disability.

This act shall take effect as follows and shall amend the following sections:
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Section 1	<i>October 1, 2015</i>	17b-706b(a)
Sec. 2	<i>October 1, 2015</i>	New section
Sec. 3	<i>October 1, 2015</i>	New section
Sec. 4	<i>October 1, 2015</i>	31-275

**LAB**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

## **OFA Fiscal Note**

### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 16 \$</b>	<b>FY 17 \$</b>
Developmental Services, Dept.; and/or, Workers' Comp. Claims-Admin. Serv. Dept.; and/or Social Services, Dept.	GF - Cost	At least \$2.1 million	At least \$2.8 million

Note: GF=General Fund

**Municipal Impact:** None

### **Explanation**

The bill will result in a cost to the state to provide workers' compensation benefits for self-directed personal care attendants (PCAs) funded by the state, of at least \$2.1 million in FY 16 and \$2.8 million in FY 17.<sup>1</sup> It is unclear if some of these expenses will be eligible for federal reimbursement under the state's Medicaid Program. Under current law, PCAs who are employed by home care agencies, and work more than 26 hours per week, are already covered by the agency's workers' compensation policy. The bill eliminates the 26 hour a week threshold.

It is unclear if coverage would be provided for PCAs through the state's self-insured program currently in place for state employees or if the state would purchase a separate group policy. If coverage were provided under the state's self-insured plan there would be additional costs to the Third Party Administrator (TPA) to provide claims support

<sup>1</sup> This estimate is based on an analysis of the incidence and severity of claims for similar direct care workers' in the state's workers' compensation program. Based on a similar population, the estimate assumes approximately 265 new claims per year with an average overall claims payment of approximately \$10,702. Medical expenses are based on injuries associated with the back, shoulders, and knees.

to the new population as the TPA does not currently have the capacity. Costs would be incurred either as an increase to the current TPA contract or as a separate contract with the TPA. The current annual contract is approximately \$5.3 million; each 1% increase is \$52,500.

The state's workers' compensation program, in collaboration with state agencies and its TPA, implement return to work efforts, follow-up hearings and supervision, implement policies for safe working environments, ergonomic setup, and other trainings to mitigate potential claims exposure. It is uncertain to what extent the state would have the ability or authority to implement such cost control strategies for the PCA population limiting the state's ability to manage claims costs.

Lastly, the responsible agency is not identified in the bill. Other than the cost to provide coverage enumerated above, there is no cost to state agencies including the Departments of Developmental Services, Social Services, Administrative Services or the Workers' Compensation Commission to develop coverage for PCAs. There is no cost to municipalities.

### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis****sHB 6878*****AN ACT CONCERNING WORKERS' COMPENSATION LIABILITY FOR INDIVIDUALS RECEIVING SERVICES FROM PERSONAL CARE ATTENDANTS.*****SUMMARY:**

This bill requires the state to provide workers' compensation coverage for personal care attendants (PCAs) who provide personal care assistance to a consumer under a state-funded program (e.g., the acquired brain injury Medicaid waiver program, personal care assistant Medicaid waiver program, or CT Home Care Program for Elders).

Current workers' compensation law considers a consumer receiving services from a PCA to be the PCA's employer, but employers do not have to provide workers' compensation coverage for employees who work in a private dwelling for less than 26 hours per week. Under the bill, PCAs providing personal care assistance to a consumer under a state-funded program are no longer exempt. Thus, these PCAs will receive workers' compensation coverage from the state regardless of how many hours they work in a consumer's home.

The bill requires the commissioners of Administrative Services, Developmental Services, and Social Services to collaborate with the Workers' Compensation Commission chairman to provide workers' compensation benefits for the covered PCAs. The costs for providing the benefits must be paid through a separate appropriation and cannot reduce PCA services or affect the consumers they are serving.

EFFECTIVE DATE: October 1, 2015

**COMMITTEE ACTION**

## Labor and Public Employees Committee

Joint Favorable Substitute

Yea 11 Nay 2 (03/12/2015)